IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2485 OF 2007

The Commissioner of Police & Ors. .... Petitioners
V/s
Mohd. Rais s/o Mohd. Haroon & Ors. .... Respondents.

Shri A.A.Kumbhakoni, Associate Advocate General, for the petitioners.

Mr.S.K.Dube, Adv. For the respondents.

CORAM: A.P.DESHPANDE, J.
9/10/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of both the parties.

This petition is filed by the Commissioner of Police taking exception to the order passed by the Wakf Tribunal restraining the present petitioners from carrying on the construction of a police station. Respondent No.1 instituted a suit bearing No.185/06 before the Wakf Tribunal. The respondent No.1 has averred in the plaint that he being Muslim is beneficiary of the Wakf property and thus instituted a suit for declaration and perpetual injunction. An application claiming temporary injunction also came to be filed at Exh.5. Perusal of the plaint reveals that according to the plaintiff property bearing City Survey No.592 is a graveyard admeasuring 6250.8 sq. mtrs. and City Survey No.604 on which stands a durgah admeasures 1831.1 sq. mtrs. situated at Bhiwandi. All the reliefs in the suit are claimed in relation to the said two properties. The present petitioners who are defendants before the Wakf Tribunal opposed the claim made in the application by filing reply. It was categorically averred that the petitioners are not making any

construction on City Survey No.592 and/or 604. The case of the present petitioners is that since much prior to 1920 City Survey No.573 was standing in the name of Public Works Department of the Government and from the year 1964 the said City Survey No.573 is being used by the police department. The petitioners made out categorical case that the construction of the police station is in City Survey No.573. In the above fact situation the only question that was required to be prima facie addressed to was as to whether the construction of the present petitioners was on City Survey No.573 as contended by them or is it on City Survey No.592. It may not be out of place to state that City Survey No.592 is adjoining City Survey No.573 whereas City Survey No.604 is far away from City Survey no.573. Hence there is no scope for any construction being carried on on City SurveyNo.604. What is relevant to notice is that City Survey No.573 is a plot of land comprised in the compound wall from all the sides whereas City Survey no.592 is on the other side of the compound wall. The location of the plots with reference to the compound wall is to be properly seen from the map at Ex.D prepared by the District Inspector of Land Records. The said map was prepared by D.I.L.R pursuant to an order passed by Wakf Tribunal in the present suit. The Wakf Tribunal has proceeded to grant temporary injunction without recording a prima facie finding that the construction of the petitioners goes beyond City Survey No.573 and encroaches upon City Survey No.592. Unless and until such prima facie finding in regard to encroachment is recorded Wakf Tribunal could not assume jurisdiction to grant temporary injunction. Perusal of the photographs clearly reveal that the RCC structure on ground floor has been constructed and a slab has been laid on the ground floor structure. In the above fact situation the learned Associate Advocate General has submitted that permitting continuation of order of injunction would cause undue hardship and

inconvenience to the petitioners in as much as no police station would come up at an appropriate location in a sensitive area of Bhiwandi. He has further submitted that the petitioners would carry out the construction at their own costs and risk and if and in case ultimately the suit is decree in favour of respondent No.1 the petitioners shall demolish the construction and will not claim any equity on that count. Perusal of the impugned order reveals that the plaintiff has utterly failed to make out case of irreparable loss and/or balance of convenience in his favour. What is claimed by the plaintiff is a beneficial interest in the Wakf property he being a Muslim as City Survey No.592 is a graveyard and City Survey No.604 being a durgah. In my view the impugned order is patently illegal and unsustainable in law requiring interference in exercise of writ jurisdiction. Moreso in view of the statement made by the learned Associate Advocate General for the petitioners which is referred to herein above. In the result writ petition is allowed. Impugned order passed below Ex.5 in Suit No.185/06 by Wakf Tribunal is quashed and set aside. It shall be open for the petitioners to carry on the construction of police station in City Survey No.573. The said construction shall be carried out by the petitioners at their costs and risk and in the event if the suit filed by respondent No.1 is decreed and it is held that the construction carried out by the petitioners is an encroachment in City Survey no.592 the petitioners shall demolish the structure to the extent of encroachment and shall not claim any equity on account of having carried out the construction at their costs. Rule made absolute in above terms. At this stage learned counsel for the respondent No.1 seeks stay of this order for a period of four weeks. The prayer is opposed by learned Associate Advocate General for the petitioners by contending that granting of stay would be against the public interest as it goes to halt construction of police station at a sensitive place. Having

regard to the totality of facts and circumstances prayer for stay is rejected.

9.10.07